

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1114

Introduced by Assembly Member Bonnie Lowenthal

February 18, 2011

An act to amend Section 2600 of, and to add Section 2602 to, the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1114, as amended, Bonnie Lowenthal. Inmates: involuntary administration of psychotropic medications.

Existing law provides that a person sentenced to imprisonment in a state prison may be deprived of rights only as is reasonably related to legitimate penological interests. Existing law states that nothing in this provision shall be construed to permit the involuntary administration of psychotropic medication unless the process specified in *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526 has been followed. Existing law further requires that this process be conducted by an administrative law judge.

This bill would delete the provision regarding the medication process specified in *Keyhea v. Rushen*. The bill would instead provide that no inmate shall be administered psychotropic medication on a nonemergency basis without the inmate's informed consent, unless after a noticed hearing is conducted in which an administrative law judge determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent or refuse treatment

or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest.

The bill would provide that it is not intended to prohibit a physician from taking appropriate action in an emergency, as specified, and would require notice of a hearing to be filed with the Office of Administrative Hearings within 72 hours of administering medication on an emergency basis. When medication is administered on an emergency basis, the bill would require the hearing to commence within 21 days of the filing. The bill would provide that an order providing for the involuntary administration of psychotropic medication shall be valid for one year from the date the determination is made, and that the order may be renewed annually at subsequent hearings before an administrative law judge, as provided. In each case, this bill would require that the inmate be provided with written notice, as specified, and appointed counsel at least 21 days prior to the hearing.

This bill would incorporate changes to Section 2600 of the Penal Code made by AB 109, which has been chaptered but is not operative, to become operative only if AB 109 becomes operative.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2600 of the Penal Code, *as amended by*
2 *Section 1 of Chapter 555 of the Statutes of 1994*, is amended to
3 read:

4 2600. (a) A person sentenced to imprisonment in a state prison
5 may during that period of confinement be deprived of such rights,
6 and only such rights, as is reasonably related to legitimate
7 penological interests.

8 ~~Nothing~~

9 (b) *Nothing* in this section shall be construed to overturn the
10 decision in Thor v. Superior Court, 5 Cal. 4th 725.

11 SEC. 1.5. Section 2600 of the Penal Code, *as amended by*
12 *Section 462 of Chapter 15 of the Statutes of 2011*, is amended to
13 read:

14 2600. (a) A person sentenced to imprisonment in a state prison
15 or to imprisonment pursuant to subdivision (h) of Section 1170
16 may during that period of confinement be deprived of such rights,

1 and only such rights, as is reasonably related to legitimate
2 penological interests.

3 ~~Nothing in this section shall be construed to permit the~~
4 ~~involuntary administration of psychotropic medication unless the~~
5 ~~process specified in the permanent injunction, dated October 31,~~
6 ~~1986, in the matter of Keyhea v. Rushen, 178 Cal. App. 3d 526,~~
7 ~~has been followed. The judicial hearing for the authorization for~~
8 ~~the involuntary administration of psychotropic medication provided~~
9 ~~for in Part III of the injunction shall be conducted by an~~
10 ~~administrative law judge. The hearing may, at the direction of the~~
11 ~~director, be conducted at the facility where the inmate is located.~~

12 ~~Nothing~~

13 ~~(b) Nothing~~ in this section shall be construed to overturn the
14 decision in Thor v. Superior Court, 5 Cal. 4th 725.

15 SEC. 2. Section 2602 is added to the Penal Code, to read:

16 2602. (a) Except as provided in subdivision (b), no person
17 described in Section 2600 shall be administered any psychotropic
18 medication without his or her prior informed consent.

19 (b) If a psychiatrist determines that an inmate should be treated
20 with psychotropic medication, but the inmate does not consent,
21 the inmate may be involuntarily treated with the medication.
22 Treatment may be given on either a nonemergency basis as
23 provided in subdivision (c), or on an emergency basis as provided
24 in subdivision (d).

25 (c) The Department of Corrections and Rehabilitation may seek
26 to initiate involuntary medication on a nonemergency basis only
27 if all of the following conditions have been met:

28 (1) A psychiatrist has determined that the inmate has a serious
29 mental disorder.

30 (2) A psychiatrist has determined that, as a result of that mental
31 disorder, the inmate is gravely disabled or a danger to self *or others*
32 and does not have the capacity to refuse treatment with
33 psychotropic medications; ~~or is others.~~

34 (3) A psychiatrist has prescribed one or more psychotropic
35 medications for the treatment of the inmate's disorder, has
36 considered the risks, benefits, and treatment alternatives to
37 involuntary medication, and has determined that the treatment
38 alternatives to involuntary medication are unlikely to meet the
39 needs of the patient.

1 (4) The inmate has been advised of the risks and benefits of,
2 and treatment alternatives to, the psychotropic medication and
3 refuses or is unable to consent to the administration of the
4 medication.

5 (5) The inmate is provided a hearing before an administrative
6 law judge.

7 (6) The inmate is provided counsel at least 21 days prior to the
8 hearing. The hearing shall be held not more than 30 days after the
9 filing of the notice with the Office of Administrative Hearings,
10 unless counsel for the inmate agrees to extend the date of the
11 hearing.

12 (7) The inmate and counsel are provided with written notice of
13 the hearing at least 21 days prior to the hearing. The written notice
14 shall do all of the following:

15 (A) Set forth the diagnosis, the factual basis for the diagnosis,
16 the basis upon which psychotropic medication is recommended,
17 the expected benefits of the medication, any potential side effects
18 and risks to the inmate from the medication, and any alternatives
19 to treatment with the medication.

20 (B) Advise the inmate of the right to be present at the hearing,
21 the right to be represented by counsel at all stages of the
22 proceedings, the right to present evidence, and the right to
23 cross-examine witnesses. Counsel for the inmate shall have access
24 to all medical records and files of the inmate, but shall not have
25 access to the confidential section of the inmate's central file which
26 contains materials unrelated to medical treatment.

27 (8) An administrative law judge determines by clear and
28 convincing evidence that the inmate has a mental illness or
29 disorder, that as a result of that illness the inmate is gravely
30 disabled and lacks the capacity to consent to or refuse treatment
31 with psychotropic medications or is a danger to self or others if
32 not medicated, that there is no less intrusive alternative to
33 involuntary medication, and that the medication is in the inmate's
34 best medical interest.

35 (9) The historical course of the inmate's mental disorder, as
36 determined by available relevant information about the course of
37 the inmate's mental disorder, shall be considered when it has direct
38 bearing on the determination of whether the inmate is a danger to
39 self or others, or is gravely disabled and incompetent to refuse
40 medication as the result of a mental disorder.

(d) Nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychotropic medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist, *but in no event longer than five days after the written notice and counsel are provided pursuant to subdivision (c), unless the department first obtains an order from an administrative law judge authorizing the continuance of medication beyond five days. The order may be issued ex parte upon a showing that in the absence of the medication the emergency is likely to recur. The request for an order shall be supported by an affidavit showing specific facts. The inmate may present facts supported by an affidavit in opposition to the request. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held.*

~~(1) If the procedures set forth in subdivision (c) have not commenced prior to the administration of psychotropic medication on an emergency basis, the~~

(1) The Department of Corrections and Rehabilitation shall file with the Office of Administrative Hearings, and serve on the inmate and his or her counsel the written notice described in paragraph (7) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

(A) The inmate gives informed consent to continue the medication.

(B) A psychiatrist determines that the psychotropic medication is not necessary and administration of the medication is discontinued.

(2) If medication is being administered pursuant to this subdivision, the hearing described in paragraph (5) of subdivision (c) shall commence within 21 days of the filing and service of the notice, unless counsel for an inmate agrees to a longer period of time.

(3) With the exception of the notice and timeline provisions specified in paragraphs (1) and (2) of subdivision (d) for the commencement of the hearing in emergency situations, the inmate shall be entitled to and be given the same due process protections as specified in subdivision (c). The department shall prove the same elements supporting the involuntary administration of psychotropic medication and the administrative law judge shall be required to make the same findings described in subdivision (c).

(e) The determination that an inmate may receive involuntary medication shall be valid for one year from the date of the determination, regardless of whether the inmate subsequently gives his or her informed consent.

(f) If a determination has been made to involuntarily medicate an inmate pursuant to subdivision (c) or (d), the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration of the medication, or unless a new determination is made pursuant to the procedures set forth in subdivision (g).

(g) To renew an existing order allowing involuntary medication, the department shall file with the Office of Administrative Hearings, and shall serve on the inmate and his or her counsel, the written notice described in paragraph (7) of subdivision (c). The notice shall specify that the request is for a renewal.

(1) The request to renew the order shall be filed and served no later than 21 days prior to the expiration of the current order authorizing involuntary medication.

(2) To obtain a renewal order, the department shall provide the same due process protections as specified in subdivision (c). The department shall prove the same elements supporting the involuntary administration of psychotropic medication and the administrative law judge shall be required to make the same findings described in subdivision (c).

(3) Renewal orders shall be valid for one year from the date of the hearing.

(4) An order renewing a prior order may be granted based on clear and convincing evidence that, but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the

1 medication, such that it is unlikely that the inmate would be able
2 to manage his or her own medication and treatment regimen. No
3 new acts need be alleged or proven.

4 (5) The hearing on any petition to renew an order for involuntary
5 medication shall be conducted prior to the expiration of the current
6 order.

7 (h) In the event of a conflict between the provisions of this
8 section and the Administrative Procedure Act (Chapter 4.5
9 (commencing with Section 11400) of Part 1 of Division 3 of the
10 Government Code), this section shall control.

11 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
12 *Section 2600 of the Penal Code proposed by both this bill and AB*
13 *109, which has been chaptered but is not operative. Section 1.5*
14 *shall become operative only if (1) this bill is enacted and becomes*
15 *effective on or before January 1, 2012, (2) this bill amends Section*
16 *2600 of the Penal Code, and (3) AB 109 becomes operative, in*
17 *which case Section 2600 of the Penal Code, as amended by Section*
18 *1 of this bill, shall remain operative only until the operative date*
19 *of AB 109, at which time Section 1.5 of this bill shall become*
20 *operative.*